

## **Exhibit D**

1                   IN THE UNITED STATES DISTRICT COURT  
2                   FOR THE DISTRICT OF COLORADO

3                   Case No. 19-cv-00874-RBJ-MEH

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4                   WARNER BROS. RECORDS, INC., et al.,

5                   Plaintiffs,  
6                   vs.

7                   CHARTER COMMUNICATIONS, INC.

8                   Defendant.

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10                   Proceedings before MICHAEL E. HEGARTY, United  
11                   States Magistrate Judge, United States District Court for the  
12                   District of Colorado, commencing at 3:03 p.m., February 19,  
13                   2020, in the United States Courthouse, Denver, Colorado.

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15                   WHEREUPON, THE ELECTRONICALLY RECORDED PROCEEDINGS  
16                   ARE HEREIN TYPOGRAPHICALLY TRANSCRIBED. . .

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18                   APPEARANCES

19                   NEEMA SAHNI, JONATHAN SPERLING and MATT OPPENHEIM,  
20                   Attorneys at Law, appearing for the Plaintiffs.

21                   ERIN RANAHAN, SEAN ANDERSON, CRAIG JOYCE and  
22                   JENNIFER GOLINVEAUX (via phone), Attorneys at Law, appearing  
23                   for the Defendant.

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24  
25                   DISCOVERY CONFERENCE

1 not challenged on things like this and they will go to the  
2 end still claiming a right when they -- if they look deeper.

3 THE COURT: Are you doing anything to challenge  
4 that, then, in Cox?

5 MS. RANAHAN: I would hope so. I'm not on the Cox  
6 team, unfortunately or fortunately, depending on how you look  
7 at it, but I believe that's a subject of -- I mean, that --  
8 it just happened here, right, and we're looking at it, you  
9 know, it's interesting that it would -- and they were ordered  
10 to produce the work-for-hire agreements in that case.

11 So I don't know what the reason was that they  
12 pursued damages claims which now, looking at the face of the  
13 registration so obvious, if it's obvious, why was it in this  
14 case.

15 THE COURT: Let me ask you something.

16 MR. SPERLING: Yes, Your Honor.

17 THE COURT: Are you counsel in Cox?

18 MR. SPERLING: I am not, Your Honor, Mr. Oppenheim.

19 MR. OPPENHEIM: I was lead counsel for Cox.

20 THE COURT: Can I ask you this?

21 MR. OPPENHEIM: Happy to.

22 THE COURT: Is it acceptable in a federal court  
23 after a jury renders a verdict that there may be a 5  
24 percent -- I'm going to throw out a number, a 5 percent rate  
25 that the collective plaintiffs had no right to the works so

1     that that's \$50 million? Is that an acceptable way to  
2     proceed in federal court in a damages case, that you get that  
3     \$50 million, even though as a technical matter you weren't  
4     entitled to it? Is that proper?

5             MR. OPPENHEIM: So the answer, I have no idea that  
6     that's not the situation in the slightest.

7             THE COURT: No, but hypothetically, is that proper?

8             MR. OPPENHEIM: I can't -- Your Honor, I'm not in a  
9     position to opine on that. The plaintiffs in that case were  
10    sued works that we had every rights to pursue. The  
11    defendant, counsel on the other side, Winston & Strawn,  
12    defended vigorously on the ownership issue, on the  
13    registration working, on the work-for-hire issue. They lost  
14    those issues. We won those issues.

15            THE COURT: You mean on the discovery?

16            MR. OPPENHEIM: Not only on discovery, Your Honor,  
17    but on summary judgment. We won summary judgment of  
18    ownership on everyone of the works that we moved on.  
19    Actually, I take that back, there were a handful of works  
20    that we dropped found at the end because of issues, but we're  
21    talking about 10 or 12, I believe.

22            On the work-for-hire issue, we had an entire  
23    briefing and there was a decision by the Court on the  
24    work-for-hire issue, and the Court decided that if a -- if a  
25    company -- the designation of a copyright registration, of a

1 work is a work for hire, even if it's not work for hire, does  
2 not invalidate the registration.

3 So Ms. Ranahan --

4 THE COURT: No, she said it just doesn't entitled  
5 you to statutory damages, that's what she said.

6 MR. OPPENHEIM: No, she's simply wrong. She is  
7 (inaudible - away from mic) in this case, Your Honor. They  
8 assert that if a party marks the work as work for hire, and  
9 it's not, a copyright registration is invalid, that's the  
10 assertion. They cite to no authority for that proposition,  
11 and the reason they cite to no authority for that proposition  
12 is because there is no authority for that. In fact, they are  
13 acutely aware that the authority in the Cox case goes the  
14 other way and says that not the case.

15 The registration of something where a party may  
16 have marked it as work for hire when it's not, does not  
17 invalidate. And in this case, as in Cox, they acknowledge  
18 that the plaintiffs ultimately own works. It's not an issue  
19 of ownership. They're not disputing the ownership and even  
20 their letter here said they don't dispute ownership. They're  
21 just saying that there may have been a box checked for eight,  
22 or they disagree. Whether or not -- we could litigate over  
23 those eight, but it doesn't matter, the plaintiffs still own.

24 Going back to the Cox case, Your Honor, in the Cox  
25 case the Court ruled that we own works and they were properly

1 registered and they were before the jury.

2 THE COURT: Right, and by -- you don't need to  
3 stand, but you can. Have you seen the outcome of this 110  
4 sample?

5 MR. OPPENHEIM: I have, Your Honor.

6 THE COURT: Okay. And do you believe now that  
7 every plaintiff that prevailed in the Virginia case actually  
8 was the correct legal entity, having the correct ownership  
9 right, every single one, was the correct legal entity having  
10 the correct legal ownership right and is entitled to that  
11 money as a matter of law? Do you believe that sitting here  
12 today?

13 MR. OPPENHEIM: Your Honor, I believe that the  
14 judgment --

15 THE COURT: No, no, that's not what I'm asking you.  
16 If you can't answer the question, say you can't answer the  
17 question.

18 MR. OPPENHEIM: Your Honor, I'm not sure -- I  
19 can't -- I believe that the judgment that was rendered there  
20 on every single work was an appropriate judgment. I believe  
21 that the -- not only by the jury, but by the judge.

22 To the extent that they're now suggesting because  
23 certain works were dropped that we did not -- appear to not  
24 own the works, there is no evidence to suggest that.

25 THE COURT: That's not the question I asked you.

1 If you can't answer my question, I appreciate that.

2 MR. OPPENHEIM: I can't answer your question.

3 THE COURT: Okay.

4 MS. RANAHAN: Can I just say one thing about what  
5 happened on this issue?

6 THE COURT: Yes.

7 MS. RANAHAN: In the Cox case, we didn't have the  
8 work-for-hire agreements, so it wasn't before the judge, and  
9 the discovery court didn't allow it, but it wasn't raised  
10 like I'm raising it now. It was kind of a side issue that  
11 wasn't really emphasized. Once we got to trial, we realized  
12 we needed this, we didn't have them, so now we're going to  
13 try to get them in this case.

14 Separately what happened on the Cox rulings for  
15 these issues that were presented on summary judgment, is the  
16 Court struck our declarations finding them to be getting  
17 around the page limit, the attorney declarations trying to  
18 make this argument, so just disregarded all of the chain of  
19 title issues that we found just as a procedural matter saying  
20 these are trying to get around the page number, I'm not going  
21 to read it. I understand it's dry and boring and long stuff,  
22 but we had a lot of arguments there that were disregarded  
23 procedural.

24 On top of that, plaintiffs were able to cure any --  
25 they were able to submit declarations that said, Well, we may